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March 24, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 30, 2007

Case Number: TSO-0559

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter "the Individual") for access authorization. The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual should be granted access authorization. For the reasons detailed below, I have concluded that the Individual should be granted access authorization.

I. Background

In a 2006 personnel security questionnaire, the Individual reported that he was arrested twice - once in 1985 and once in 1999 - for alcohol-related incidents. DOE Ex. 1 (Notification Letter, Att. ¶ B). The Local Security Office (LSO) conducted a Personnel Security Interview (PSI), during which the Individual described his alcohol consumption. DOE Ex. 5. The LSO then referred the Individual to a DOE consultant-psychiatrist (the DOE Psychiatrist), who evaluated the Individual and issued a report. DOE Ex. 3.

As part of his evaluation, the DOE Psychiatrist (i) reviewed the personnel security file and the results of a recent physical examination and laboratory studies, (ii) administered seven psychological assessments, and (iii) interviewed the Individual. DOE Ex. 3 at 3-9. The DOE Psychiatrist opined that the Individual met the criteria for alcohol abuse, a mental condition that could affect judgment and reliability. *Id.* at 2,

9-10, *citing* American Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders (4th ed. text rev. 2000) (DSM-IV TR). The DOE Psychiatrist further opined that the Individual had not demonstrated adequate evidence of reformation and rehabilitation. DOE Ex. 3 at 10. The DOE Psychiatrist noted, however, that the Individual told him that he would stop drinking, effectively immediately, and the DOE Psychiatrist gave the Individual a "reasonable chance" of sustaining abstinence. *Id.* at 9.

The LSO notified the Individual that his use of alcohol raised a substantial doubt about his eligibility for a security clearance. DOE Ex. 1 (Notification Letter Attachment, *citing* 10 C.F.R. § 708.8(h) (Criterion H, mental condition) and § 708.8(j) (Criterion J, alcohol abuse). The Individual requested a hearing, DOE Ex. 2, and I was appointed to serve as the Hearing Officer.

II. The Hearing

At the hearing, the Individual did not dispute the DOE Psychiatrist's diagnosis. Instead, the Individual maintained that he had not consumed alcohol for seven months and was committed to future abstinence.

A. Written Evidence

The DOE submitted an exhibit book, which included the PSI transcript and the DOE Psychiatrist's report. DOE Exs. 3, 5. Both those exhibits reflect the Individual's description of his alcohol consumption.

The Individual submitted a January 26, 2008, letter from his Alcoholics Anonymous (AA) sponsor. The sponsor states that he has 42 years of sobriety and has observed the Individual's early progress and commitment to sobriety. According to the sponsor, the Individual has an unusual degree of "self-honesty" for a "newcomer," shares his "experience, strength, and hope at numerous meetings," and "is well-accepted in the fellowship."

B. Testimony

DOE presented one witness - the DOE Psychiatrist. He testified last. The Individual testified and presented four witnesses: a family member who resides with him, two friends, and an AA friend.

1. The Individual

The Individual did not dispute the diagnosis of alcohol abuse. He testified that, prior to his psychiatric interview, he did not think that his alcohol consumption was a problem. Tr. at 64-65, 81. The day after that interview, the Individual called the DOE Psychiatrist to tell him that he would no longer drink. Id. at 66, 72. For several weeks, the Individual "kept examining ... some of the impressions" that he had from the interview. Id. at 65. The Individual testified: "I came to the realization that I drank too much." Id. at 66.

A little over a month before the hearing, the Individual joined AA; since then, he has attended five or six meetings a week. Tr. at 95. He views AA as a "whole support system." Id. at 73. The people at AA "are willing to do nearly anything for you, right off the bat, you know. The acceptance is incredible." Id. at 74. Participating in AA also allows him to help others:

We had a couple of new guys come in, so I'm no longer the newest guy there. It feels good to be able to help them. I mean, I can't help them much, but I can - I can offer to them [what] the next month is going to be

Id. at 78. According to the Individual, "if you come five or six nights a week, seven nights a week," in 30 days "you won't recognize yourself." Id.

The Individual testified that AA would help him maintain his abstinence. He stated that, on one occasion, he thought about drinking but "the image of the familiar faces in the group meeting" prevented him from doing so. Tr. at 77. When the Individual asked his AA friend how to choose a sponsor, the AA friend recommended choosing someone that "you feel some sort of a connection with." Id. at 87. The Individual has just obtained a sponsor with whom he has such a connection. Id. "Every time" the Individual goes to AA, he "get[s] something out of it" and does not see any end to his AA participation. Id. at 95.

In addition to AA, the Individual views his personality as supporting continued abstinence. "When I make up my mind" to do something, "it's a done deal, and this is a done deal." Tr. at 80. As precedent, the Individual cited his smoking cessation three years earlier. Id.

2. The Family Member

A family member, who resides with the Individual, testified concerning the Individual's abstinence. The family member testified that, as a result of the Individual's interview with the DOE Psychiatrist, the Individual stopped drinking. Tr. at 53. Recently, the Individual has been getting home later, and the Individual told the family member that he has been attending AA. Id. at 53-54. There is no alcohol in their house. Id. at 55. When the Individual and the family member have been at social events where alcohol was served, the Individual has abstained. Id. The Individual has expressed a commitment to abstinence; when he "sets out to do something, he always follows through." Id. If the Individual started to drink again, the family member would talk to the Individual and would contact the two friends who testified at the hearing, as well as a third friend, to help the Individual resume abstinence. Id. at 56-58.

3. Friends

Friend No. 1 has known the Individual for three years and is also a colleague. Tr. at 7-8. The friend sees the Individual daily at work, and he performs his job "extremely well." Id. at 8, 11-12. The friend also sees the Individual socially. Id. at 10. She was "surprised" to hear that he had a problem with alcohol consumption because "I've seen him take two drinks the entire time I've known him." Id. In the past seven months, the Individual has visited at her house an average of once a month and has not had any alcohol. Id. at 11, 16-17. The friend had a party several months ago where alcohol was served, and the Individual had nothing but "ice tea or water the whole time he was there." Id. at 14. The friend knows that the Individual is attending AA. Id. at 18.

Friend No. 2 has known the Individual for about four and one-half years. Tr. at 29. They worked together for about three years and have been close social friends for the last year and one-half. Id. They talk "every day" on the phone and get together twice a week. Id. at 29, 33, 44. Until about seven months ago, they used to meet once a week after work at a local pub where they'd have "a maximum of two drinks." Id. at 31, 33. The friend has not seen the Individual drink in about seven months, and they spend their time together on family-oriented activities. Id. at 31-32, 45.

4. AA Friend

An AA friend testified that the Individual has attended AA for roughly a month. Tr. at 22. The Individual is there "every night, he's made a lot of friends." *Id.* at 23. The Individual contributes "very well" and has a "good understanding" of the program. *Id.* The AA friend believes that the Individual "is not drinking." *Id.* at 24.

5. DOE Psychiatrist

The DOE Psychiatrist was present throughout the hearing. He testified last.

The DOE Psychiatrist discussed his evaluation seven months earlier. The diagnosis of alcohol abuse was based on the Individual's description of his alcohol consumption and the results of the psychological assessments. Tr. at 106-07. At the time of the interview, the DOE Psychiatrist thought that the Individual was "on the road to abstinence." *Id.* at 109.

The DOE Psychiatrist discussed what he had heard at the hearing. He cited as "positive" information (i) the Individual's "owning" his alcohol problem and recognizing the need to abstain, (ii) his commitment to AA, (iii) his positive relationship with the family member, and (iv) his ability to "follow through" on commitments, as evidenced by the testimony concerning his smoking cessation. Tr. at 107-08.

As a result of the positive information, the DOE Psychiatrist revised his opinion. The DOE Psychiatrist opined that, given the Individual's progress, his risk of relapse to problematic drinking is now "low." Tr. at 111-12.

III. Applicable Regulations

The regulations governing an individual's eligibility for access authorization (also referred to as a security clearance) are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." An individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* See generally *Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the

"clearly consistent with the interests of national security" test indicates that "security-clearance determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

If a question concerning an individual's eligibility for a clearance cannot be resolved, the matter is referred to administrative review. 10 C.F.R. § 710.9. The individual has the option of obtaining a decision by the manager at the site based on the existing information or appearing before a hearing officer. *Id.* § 710.21(b)(3). At a hearing, the burden is on the individual to present testimony or evidence to demonstrate that he is eligible for access authorization, i.e., that access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." *Id.* § 710.27(a).

IV. Analysis

It is undisputed that alcohol abuse raises security concerns under Criteria H and J. It is also undisputed that the Individual was diagnosed with alcohol abuse. Accordingly, the only issue to decide is whether the Individual has demonstrated adequate evidence of reformation or rehabilitation. 10 C.F.R. § 710.7(c).

The DOE regulations do not specify what constitutes adequate evidence of reformation or rehabilitation. Accordingly, I look to our precedent and the adjudicative guidelines, see Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (the Adjudicative Guidelines). One set of mitigating conditions involves the individual's acknowledgement of a problem and positive behavior changes. Guideline G, ¶ 23(b). Another set of mitigating conditions involves abstinence, participation in a support group such as AA, and a favorable prognosis from a qualified medical professional. *Id.* ¶ 23(d).

Based upon the factors set forth in the Adjudicative Guidelines, I find that the Individual has presented adequate evidence of reformation and rehabilitation. The Individual testified that he has been abstinent for seven months, is committed to abstinence and AA, and has a support system in place. See, e.g., Tr. at 73-78, 87, 95. The witnesses - a family member,

friends, and AA members - corroborate his testimony. See, e.g., *id.* at 11 (friend), 22-24 (AA friend), 31-32 (friend), 53-58 (family member). See also January 26, 2008 letter from AA sponsor. The DOE Psychiatrist believes that, based on the information presented at the hearing, the Individual's risk of relapse to problematic drinking is "low" and, therefore, that he has established adequate evidence of reformation and rehabilitation. Tr. at 111-12. Accordingly, I find that the Individual has resolved the Criteria H and J concerns. See, e.g., *Personnel Security Hearing*, TSO-0543, 30 DOE ¶ 82,765 (2008) & *Personnel Security Hearing*, TSO-0369, 29 DOE ¶ 82,995 (2007) (low risk of relapse resolves the concern).

V. Conclusion

The Criteria H and J concerns set forth in the Notification Letter have been resolved. Accordingly, access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Based on the foregoing, the Individual should be granted access authorization. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Janet N. Freimuth
Hearing Officer
Office of Hearings and Appeals

Date: March 24, 2008